IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2022

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

WP.No.33847 of 2022

M/s.Can Homes Ltd.,
Rep. by its Authorised Officer,
Mr.V.Deepanchakkaravarthi
Having its Branch Office at
Old No.29A, New No.:7A,
Ground Floor, High School Road,
Secretariat Colony, Ambattur,
Chennai-600 053.

... Petitioner

Vs.

1. The Deputy Commissioner of Police,
Office of the Deputy Commissioner of Police,
Law and Order, Greater Chennai Police,
Butt Road, Nazarethpuram, Gandhi Nagar,
St.Thomas Mount,
Chennai-600 089.
2. The Assistant Commissioner of Police,
Office of the Assistant Commissioner of Police,
Law & Order, Greater Chennai Police,
Velacherry Road, Aarathi Nagar,
Near Selaiyur Police Station,
Chennai-600 059.
3. The Inspector of Police cum Station House Officer-Law & Order,
Office of the Station House Officer,
Velacherry Road, Aarathi Nagar,
Selaiyur Police Station,
Chennai-600 059.

... Respondents

Writ Petition is filed under Article 22 of the Constitution of India, praying to issue a writ of Mandamus directing Respondents to give Police protection to enable the Petitioner Company to take physical possession of the Mortgaged Property in furtherance of the Crl.MPo.5861 of 2022 on the file of the Chief Judicial Magistrate, Chengalpattu and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of this case.

For Petitioner	:	Mr.S.I.Muthaiah
For Respondents	:	Mr.S.Santhosh, Govt. Advocate (Crl.Side)

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<u>O R D E R</u>

This Writ Petition has been filed to direct the respondents to provide police protection to enable the Petitioner-Company to take physical possession of the Mortgaged Property in furtherance of the Crl.MPo.5861 of 2022 on the file of the Chief Judicial Magistrate, Chengalpattu.

2. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) appearing for the respondents.

3. The learned counsel for the petitioner submitted that in pursuance of the order of the learned Chief Judicial Magistrate, Chengalpat dated 14.07.2022 in CMP.No.5861 of 2022, the petitioner had given representation

to the respondents police seeking for police protection in connection with the SARFAESI proceedings, but the respondents police did not consider the representation of the petitioner and did not accord them due police protection for implementing the order of the Court.

4. The learned Government Advocate (Crl.Side) appearing for the respondents submitted that in the said order of the learned Chief Judicial Magistrate itself, an Advocate Commissioner has been appointed for the purpose of taking possession of the said property in pursuant to the order. If the said Advocate Commissioner gives any representation by stating that there is difficulty in taking possession, the respondents police shall consider the same.

5. It is seen from the order dated 14.07.2022 made in CMP.No.5861 of 2022, the following order has been made:

> *'1.The respondents have Housing Loan of Rs.36,00,000/- on 01.07.2016 and also executed necessary documents in favour of the petitioner bank promising to repay the loan. The respondents deposited the title deeds namely Sale deed No:7182/2016, dt: 01-07-2016 and created equitable mortgage by registering Deposit of Title Deed No:7183/2016, dt:01-07-2016 relating to the petition mentioned property. Therefore, the respondents are jointly and severally liable to pay the loan amount along with interest.*

2.The respondents failed to repay the above loan and the accounts were classified as a Non Performing Asset as on 30-04-2019. Therefore, the petitioner through their Authorized Officer issued a Demand Notice u/s 13(2) of SARFAESI Act dt:15-05-2019 calling upon the respondents to pay Rs.41,89,271/- as on 31-05-2021. The said demand notice was received by the respondents but they have not complied the same. Therefore, the petitioner/bank has taken symbolical possession 19-10-2021. The possession notice was affixed in the conspicuous part of the secured asset which is described hereunder and also served on the respondents herein and the possession notice was published in The Indian Express and Dinamani dailies on 22-10-2021 as provided under the provisions of SARFAESI Act. Thus, the provisions of SARFAESI Act have been complied by the petitioner. As per the said possession notice respondents are jointly and severally liable to pay Rs.41,89,271/- payable to the petitioner as evidenced by the statement of accounts maintained by the petitioner in the regular course of business. The respondents have willfully defaulted to repay the loan amounts and are making stumbling block from taking actual physical possession of the secured mortgaged assets. Unless, the petition mentioned property is taken possession actually, the petitioner will be unable to take further measures under the provisions of SARFAESI Act and Transfer of Property Act and the character of possession is only a trespasser in the eye of law and it is illegal. The petitioner fears the respondents would thwart and prevent the implementation of *the said Act and therefore it is imperative that the petitioner be provided with sufficient protection so that the purpose of the Act is achieved.*

The point of consideration is whether the petitioner/Bank is entitled to the relief sought for in the petition.

3. In the case on hand, the petitioner/Bank has produced copy of Loan documents, Title Deeds, Notice, Postal Acknowledgment Cards, Possession Notice and Paper Publication and sufficiently established that the petition properties are mortgaged and secured properties. The learned counsel appearing for the petitioner/bank has relied upon the following ruling of the Hon'ble Supreme Court in which it was held as follows:

> *"Thus it is only a procedural step without any adjudication of any dispute whatsoever. The action is therefore, only an administrative order made for taking possession of the secured assets, if all other conditions are fulfilled. Having already noted that the powers exercised by the CMM and DM in terms of S.14 of the 2002 Act are synonymous to each other and that they are not adjudicatory in nature..."*
>
> *"...It did notice that the authority referred to in S.14 of 2002 Act has no power to adjudicate upon any rights of the parties but can only render assistance to the secured creditor to recover possession..."*
>
> *"The power to be exercised u/s 14 of 2002 Act by the*

concerned authority is, by its very nature, non-judicial or state's coercive power. Furthermore, the borrower or the persons claiming through borrower or for that matter likely to be affected by the proposed action being in possession of the subject property, have statutory remedy u/s 17 of 2002 Act and/or Judicial review under Art.226 of the Constitution of India. In that sense, no prejudice is likely to be caused to the borrower/lesser nor is it possible to suggest that they are rendered remediless in law. At the same time, the secured creditor who invokes the process u/s 14 of the 2002 Act doe not get any advantage much less added advantage..."

"It also noted that the authority after receiving such request u/s 14 of 2002 Act, was not expected to do any further scrutiny of the matter expect to verify from the secured creditor whether notice u/s 13(2) of the Act has already been given or not and whether the secured asse is located within his jurisdiction. There is no adjudication of any kind at this stage. The Court also noticed in para.23 of the reported judgment that after amendment of Sec.14 of 2002 Act, by inserting first proviso therein the designated authority has to satisfy itself only with regard to the matters mentioned in clauses (i) to (ix)..." <u>Indian Bank (Vs) The Visalakshi and another (Civil Appeal No:6295 dt: 23-09-2019</u>

In the above ruling, it is clearly laid down that no adjudication of any sort is to be done by this Court on the petition filed by the *petitioner and this Court has to lend its helping hand by passing only an administrative order. On perusals of records, it is revealed that this petition has been filed after the expiry of 60 days from the date of receipts of notice issued u/s 13(2) of SARFAESI Act by the respondents. No doubt, the respondents are not entitled to any further notice under the said Act from this Court. The materials placed before this Court would reveal that the petitioner/bank is having its office within the jurisdiction of this Court. The Encumbrance Certificate produced by the petitioner would show that the title of the respondents are valid and the property is without any encumbrance. Necessary affidavit of the authorised officer of the Secured Creditor/Petitioner also produced who duly affirmed that the provisions of the SARFAESI Act and rules have been duly complied with. This Court is satisfied about the contents of the affidavit filed for the purpose of taking the possession of secured assets. Thus, this court is of the considered view that compelling situation arises for the petitioner to realize the loan amount by taking necessary action and to take actual possession of the secured assets by sale of transfer. In the interest of justice, it is just and necessary to render assistance to the secured creditor in taking possession of the secured assets and in doing so, the court can appoint a commissioner for identification of the second assets and taking possession thereof and if there is any resistance, the petitioner can seek police assistance and take any effective steps to have possession of the secured assets taken over. In the light of the above documents* *produced by the petitioner and in view of the principles laid down in the citation supra inter alia considering all aspects, this court is of the view that an appropriate direction to prepare inventory and to take physical possession of the secured asset to be issued. For the above reasons and discussions, it is decided that the petitioner/bank is entitled to the relief sought for in the petition and the above point is accordingly answered in favour of the petitioner/bank.'*

6. Since the order is very specific as to the appointment of the Advocate Commissioner by name Mr.V.Rajesh, Advocate for assisting the petitioner in taking inventories and take possession of the said property and a direction has also been given with regard to the providing of police protection, it is obligatory on the part of the respondents police to do the needful. The petitioner is at liberty to give representation through the Advocate Commissioner in compliance of the order of the Court. In case of such representation is being made, the respondents shall consider the same and do the needful in compliance of the Court order.

7. With the above observations, this Writ Petition is disposed of. There shall be no order as to costs.

16.12.2022

Index: Yes/No

Speaking / Non Speaking Order
kmi

To

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   Office of the Deputy Commissioner of Police,
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R.N.MANJULA, J.

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